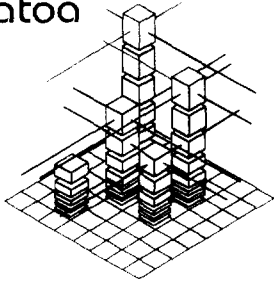


natoa



**The National Association of
Telecommunications Officers
and Advisors**

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

1200 19th Street, NW, Suite 300
Washington, DC 20036
(202) 429-5101
FAX (202) 223-4579

February 7, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

FEB 7 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY


Re: Ex Parte Notice - Preemption of Local Zoning Regulation of
Satellite Earth Stations (IB Docket No. 95-59); Petition of the
Cellular Telecommunications Industry Association (RM 8577)

Dear Mr. Caton:

In accordance with Section 1.2000 et seq. of the Commission's rules, this is to advise that on Wednesday, February 7, 1996, Susan Littlefield, Cable Regulatory Administrator for the City of St. Louis and Chair of Regulatory Affairs for NATOA, and Eileen Huggard, Executive Director of NATOA, met with Mary McManus, Legal Advisor to Commissioner Susan Ness, to discuss various issues in the above-referenced proceedings. The attachment to this letter was used in that discussion. In addition, a copy of the American Planning Association ("APA") Cellular Tower Survey (dated November 8, 1995) was submitted and highlights of the survey were briefly discussed, along with the public safety aspects of building codes. A total of four copies of the APA survey are herewith provided to you, two copies for each proceeding.

An original and four copies of this letter were filed with the Commission and a copy was delivered to the above-named Commission personnel on February 7, 1996.

Very truly yours,


Eileen E. Huggard
Executive Director

Attachment

cc: Mary McManus

No. of Copies rec'd 0+4
List ABCDE

ZONING

- 92% of cellular tower applications are approved, 74% within less than 60 days.
- Local zoning preemption of satellite dishes (Section 25.104) should not be expanded.
- The industry has not presented evidence of widespread abuse.
- Public safety issues covered by building code requirements are just as important as zoning codes.
- C-Band and VSAT dishes are huge.
- There are no standard rules for “variances” because all variances are different.
- BOCA (adopted by majority of cities and counties) already permits dishes under two feet.
- 93% of APA respondents oppose federal preemption of local zoning and review authority.
- Zoning terms such as “commercial” or “residential” are overly broad.



**American
Planning
Association**

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1776 Massachusetts Ave., N.W.
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122 S. Michigan Ave., Suite 1600
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News Release

**Contact: Jan Rothschild
(202)872-0612**

November 8, 1995

Survey Shows Cellular Industry Exaggerates Regulatory Burden--Most Local Tower Permits Approved

(Washington, DC)-- In a survey of 230 cities and counties across the country, the American Planning Association found that contrary to industry claims, 92 percent of permits for cellular towers are approved, most in less than 60 days. In fact, the survey shows that 76 percent of communities are streamlining their application process in order to help the industry put its network in place. The communities surveyed represent approximately 25 million people--approaching ten percent of the American population.

Working with the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, and the National Organization of Telecommunications Officers and Advisors, APA found that both large and small communities approve more than 92 percent of cellular tower applications submitted to them. Even though the survey found that eight percent of permits are denied, these figures cite only initial denials.

"We recognize there is a need for these towers," said Terrance Harrington, Director of Planning for Roanoke County, Virginia. "In cases where the applications don't meet community standards, the companies can work with us to submit another application that conforms. I would say that eventually, most towers get built."

The APA survey is timely because a House-Senate Conference Committee is considering an industry-backed provision in the House-passed telecommunications bill, H.R. 1555, which would preempt local government authority over the siting of cellular towers. Industry leaders have also petitioned the FCC to override local laws, claiming that local governments are trying to prevent tower sitings through cumbersome zoning and permitting requirements.

"Claims that cities are routinely denying antennae location sites represent a classic case of over-reaction by telecommunication companies," stated Michael Guido, Mayor of Dearborn, Michigan, who directs the work of the U.S. Conference of Mayors on telecommunications issues. "The survey's results confirm that the overwhelming majority of antennae citing requests are being granted in small, medium, and large cities across the country."

Although almost all applications are approved, respondents are most concerned about aesthetics in the siting of towers. Ninety-three percent believe that localities should remain involved in the approval process to ensure community integrity.

-over-

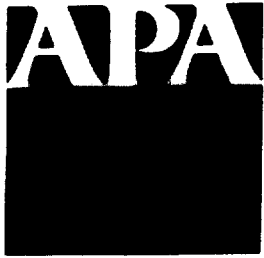
"Local governments are not in any way attempting to prohibit the conduct of free enterprise," said Donna Halstead, a member of the Dallas City Council, "but we absolutely believe that in providing services, the telecommunications industry should be good neighbors. Towers are often as high as 180 feet and communities are rightly concerned that they are built on appropriate sites which protect health and safety as well as the appearance of our communities. A family that invests its life savings in a home should be confident that their investment will be protected by the zoning in their community. Congress, the FCC and the industry shouldn't be permitted to mandate local standards from Washington."

Despite local concerns, localities are cooperating with the cellular industry. Out of more than 1,390 applications submitted, only 116 applications have been denied.

"The survey clearly demonstrates that local governments are responding positively regarding cellular tower citing issues," said Marilyn Praisner, a councilmember in Montgomery County, Maryland. "We are balancing the needs of the communications industry and the local community. There is no need for federal preemption of local zoning authority."

The American Planning Association is a nonprofit, public interest and research organization representing 30,000 planners, elected and appointed officials, and citizens concerned with urban and rural development issues. For additional information, and a free copy of the APA survey, contact Jan Rothschild or Karen Graham at 202-872-0611.

###



AMERICAN PLANNING ASSOCIATION

CELLULAR TOWER SURVEY

November 8, 1995

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Karen B. Graham, Public Affairs Associate
Michelle Gregory, Research Associate



APA Cellular Tower Survey

In response to cellular industry claims that local governments are a barrier to construction of cellular towers, APA initiated this survey. The purpose of the survey was tri-fold: First priority was to determine if local governments impede the siting of cellular towers, and thus, the development of the "information skyway system." Second, was to determine local governments reaction to the cellular industry's attempt to gain federal preemption over local governments in the siting of cellular towers. And third was to collect information on siting requirements to assist local governments in the review of future tower applications. We began the survey in mid-September. As of November 7, 1995, we had received 230 responses from jurisdictions representing about 25 million people, which approaches 10% of the nation's population. More surveys continue to arrive daily. The data indicates:

- **92% of applications for permission to construct cellular towers are approved by local government review bodies (230 agencies received a combined total of 1,390 applications, 116 were denied).**
- **Not only do local governments approve the majority of applications they receive, 74% of them review and process applications in less than two months.**
- **Local governments are responding to the demand for this technology: Of the jurisdictions averaging longer review periods, 76% are streamlining or updating their current procedures.**
- **The primary concern related to cellular tower siting is aesthetic appearance, followed by structural integrity and health risks.**
- **An overwhelming number of respondents, 93%, register opposition to federal preemption of local zoning and review authority. The regulation of cellular towers, like any other land use, is viewed as a local responsibility. Respondents believe that local governments are best qualified to analyze and mitigate the impacts of such land uses in the community, while also accommodating them.**

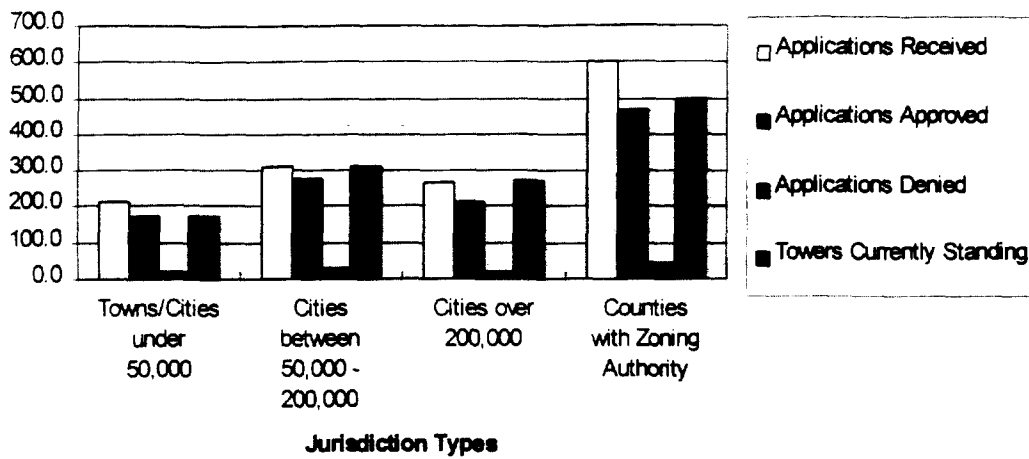
Working with the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, and the National Organization of Telecommunications Officers and Advisors, the survey was distributed to local governments in the following categories:

- **Towns/Cities with a population under 50,000**
- **Cities with a population of 50,000 to 200,000**
- **Cities with a population of over 200,000**
- **Counties with zoning authority**

Respondents were asked to comment on their experiences with the siting of cellular communication towers through the survey instrument attached (Appendix A). For the purposes of this report, we have limited our summary to the data on application review and pre-emption of authority. Data on the site specifications will be made available at a later date.

The results of our preliminary findings follow, according to jurisdiction size:

Cellular Tower Siting Activity (Questions 1 - 4)



1. **Has your community ever received an application for permission to erect a cellular communication tower? ____ Yes (how many? __) or ____ No.**

230, or 100% of respondents said yes.

Towns/Cities with a population under 50,000

127 cities responded that they had received at least one tower application. In total, **210 tower applications had been received by these cities.** An average of 1.65 tower applications per town/city.

Cities with a population of 50,000 TO 200,000

51 cities responded that they had received at least one tower application. In total, **311 tower applications had been received by these cities.** An average of 6.1 tower applications per city.

Cities with a population of over 200,000

12 cities responded that they had received at least one tower application. In total, **266 tower applications had been received by these cities.** An average of 22.2 tower applications per city.

Counties with zoning authority

40 counties responded that they had received at least one tower application. In total, **603 tower applications had been received by these counties.** An average of 15.1 tower applications per county.

2. How many tower applications has your community approved?

Towns/Cities with a population under 50,000

*Of those 210 applications, 173, or **82% of all tower applications had been approved** as of November 7, 1995.*

Cities with a population of 50,000 to 200,000

*Of those 311 applications, 278, or **89% of all tower applications had been approved** as of November 7, 1995.*

Cities with a population of over 200,000

*Of those 266 applications, 214, or **80% of all tower applications had been approved** as of November 7, 1995.*

Counties with zoning authority

*Of those 603 applications, 469 or **78% of all tower applications had been approved** as of November 7, 1995.*

3. How many tower applications has your community denied?

Towns/Cities with a population under 50,000

*Of those 210 applications, 21, or **10% of all tower applications had been denied** as of November 7, 1995.*

Cities with a population of 50,000 to 200,000

*Of those 311 applications, 28, or **9% of all tower applications had been denied** as of November 7, 1995.*

Cities with a population of over 200,000

Of those 266 applications, 22, or 8% of all tower applications had been denied as of November 7, 1995.

Counties with zoning authority

Of those 603 applications, 45, or 7.5% of all tower applications had been denied as of November 7, 1995.

4. How many cellular towers does your community have now?

Towns/Cities with a population under 50,000

The 127 respondents reported a total of 175, or 83% of all towers proposed as currently standing.

Cities with a population of 50,000 to 200,000

The 51 respondents reported a total of 309, or 99% of all towers proposed as currently standing.

Cities with a population of over 200,000

The 12 respondents reported a total of 273, or 103% of all towers proposed as currently standing.

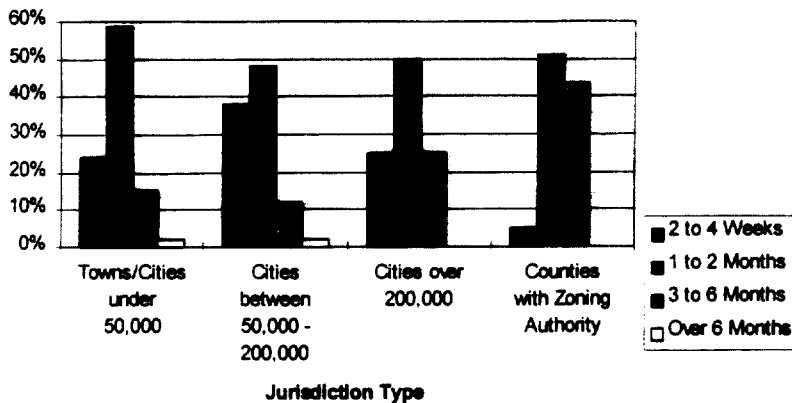
Counties with zoning authority

The 40 respondents reported a total of 498, or 83% of all towers proposed as currently standing.

Note: *The ratio of approvals to total towers standing is slightly skewed by the fact that some respondents included in their count of total towers standing, those which had been erected prior to the existence of their review process.*

5. Approximately how long does the application review process take? (from submission to final approval):
a. 2 - 4 weeks _____ b. 1 - 2 months _____ c. 3 - 6 months _____ d. 6+ months _____

Processing Time (Question 5)



Towns/Cities with a population under 50,000

Of the 127 respondents in this category, 104 answered this question:

25 or 24% reported their review process took 2 - 4 weeks.

61 or 59% reported their review process took 1 - 2 months.

16 or 15% reported their review process took 3 - 6 months.

2 or 2% reported their review process took over 6 months.

Cities with a population of 50,000 to 200,000

Of the 51 respondents in this category, 50 answered this question:

19 or 38% reported their review process took 2 - 4 weeks.

24 or 48% reported their review process took 1 - 2 months.

6 or 12% reported their review process took 3-6 months.

1 or 2% reported their review process took over 6 months.

Cities with a population of over 200,000

Of the 12 respondents in this category, 12 answered this question:

3 or 25% reported their review process took 2 - 4 weeks.

6 or 50% reported their review process took 1 - 2 months.

3 or 25% reported their review process took 3 - 6 months.

None reported their review process took over 6 months.

Counties with zoning authority

Of the 40 respondents in this category, 39 answered this question:

2 or 5% reported their review process took 2 - 4 weeks.

20 or 51% reported their review process took 1 - 2 months.

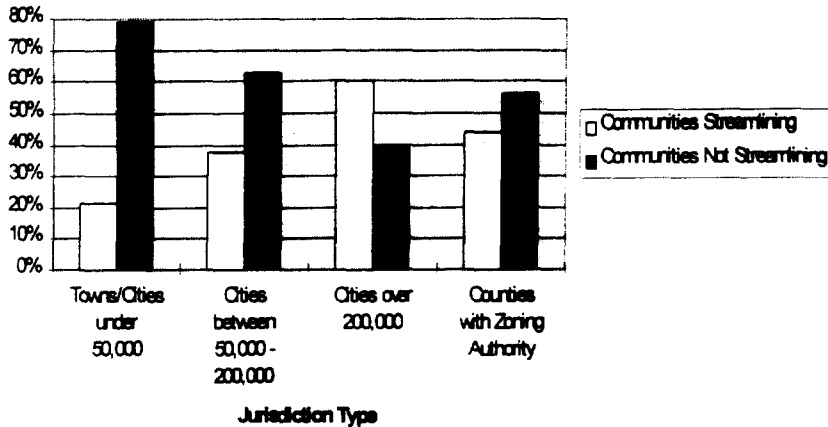
17 or 44% reported their review process took 3 - 6 months.

None reported their review process took over 6 months

6. With an anticipated increase in tower applications, is your community updating or streamlining their present review process? a. _____

_ Yes b. _____ No

Community Response to Rise in Tower Applications (Question 6)



Towns/Cities with a population under 50,000

Of the 127 respondents in this category, 104 answered this question:

22 or 21% reported they were attempting to update their review process.

82 or 79% reported they were not attempting to update their review process.

Cities with a population of 50,000 to 200,000

Of the 51 respondents in this category, 48 answered his question:

18 or 37.5% reported they were attempting to update their review process.

30 or 62.5% reported they were not attempting to update their review process.

Cities with a population of over 200,000

Of the 12 respondents in this category, 10 answered this question:

6 or 60% reported they were attempting to update their review process.

4 or 40% reported they were not attempting to update their review process.

Counties with zoning authority

Of the 40 respondents in this category, 25 answered this question:

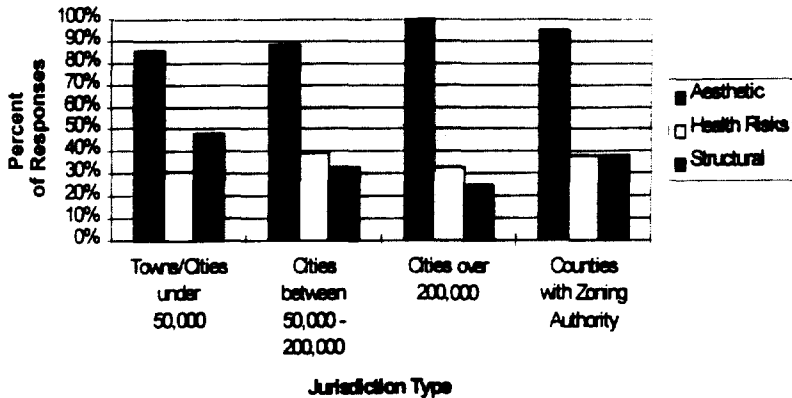
11 or 44% reported they were attempting to update their review process.

14 or 56% reported they were not attempting to update their review process.

7. Were the main concerns regarding tower approval in your community related to:

- a. aesthetic appearance _____
b. health risks _____
c. structural soundness _____

Primary Tower Siting Concerns (Question 7)



Towns/Cities with a population under 50,000

Of the 127 respondents in this category, 104 answered this question. A total of 171 reasons were reported, with aesthetic appearance ranking as the primary concern:

89 or 86% reported aesthetic appearance as a concern regarding tower approval.

**32 or 31% reported structural soundness as a concern regarding tower approval.
50 or 48% reported health risks as a concern regarding tower approval.**

Cities with a population of 50,000 to 200,000

Of the 51 respondents in this category, 51 answered this question. A total of 82 reasons were checked off. Again, aesthetic appearance ranked as the primary concern:

**45 or 88% reported aesthetic appearance as a concern regarding tower approval.
20 or 39% reported structural soundness as a concern regarding tower approval.
17 or 33% reported health risks as a concern regarding tower approval.**

Cities with a population of over 200,000

Of the 12 respondents in this category, 12 answered this question. A total of 19 reasons were checked off. Again, aesthetic appearance ranked as the primary concern:

**12 or 100% reported aesthetic appearance as a concern regarding tower approval.
4 or 33% reported structural soundness as a concern regarding tower approval.
3 or 25% reported health risks as a concern regarding tower approval.**

Counties with zoning authority

Of the 40 respondents in this category, 39 answered this question. A total of 67 reasons were checked off. Again, aesthetic appearance ranked as the primary concern:

**37 or 94% reported aesthetic appearance as a concern regarding tower approval.
15 or 38% reported structural soundness as a concern regarding tower approval.
15 or 38% reported health risks as a concern regarding tower approval.**

8. Does your community encourage or require tower sharing to the extent that it is technically feasible?
a. Yes _____ b. No _____

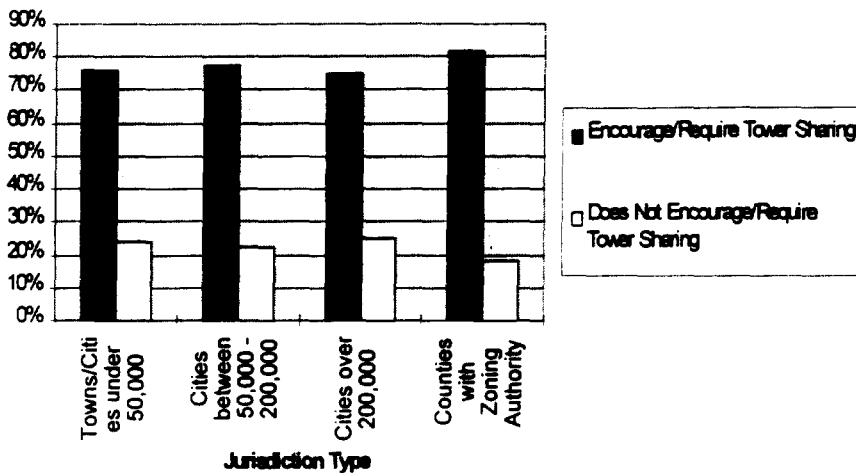
Towns/Cities with a population under 50,000

Of the 127 respondents in this category, 100 answered this question:

76 or 76% encourage or require tower sharing.

24 or 24% do not encourage or require tower sharing.

Tower Sharing (Question 8)



Cities with a population of 50,000 to 200,000

Of the 51 respondents in this category, 49 answered this question:

38 or 78% encourage or require tower sharing.

11 or 22% do not encourage or require tower sharing.

Cities with a population of over 200,000

Of the 12 respondents in this category, 12 answered this question:

9 or 75% encourage or require tower sharing.

3 or 25% do not encourage or require tower sharing.

Counties with zoning authority

Of the 40 respondents in this category, 38 answered this question:

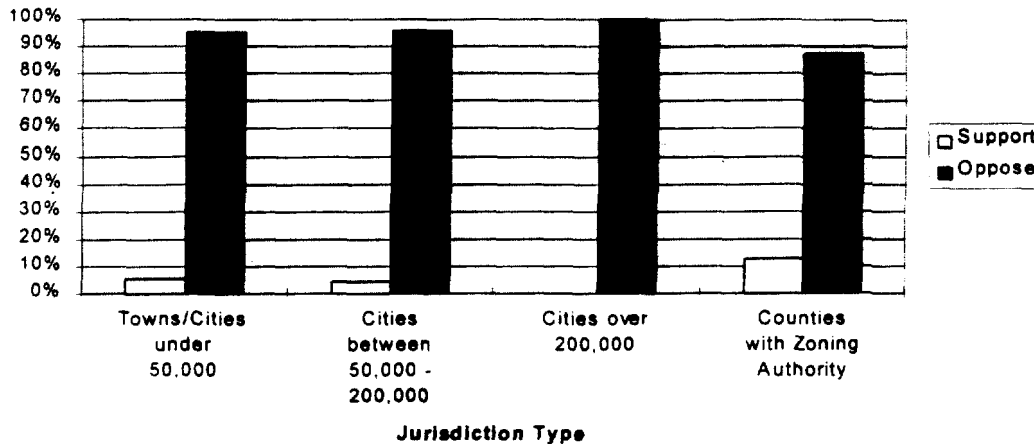
31 or 82% encourage or require tower sharing.

7 or 18% do not encourage or require tower sharing.

9. Would you support or oppose federal pre-emption of local cellular tower siting standards?

a. support _____ b. oppose _____

Respondents' Position on Federal Pre-emption (Question 9)



Towns/Cities with a population under 50,000

Of the 127 respondents in this category, 119 answered this question: 6 or 5% would support federal pre-emption. 113 or 95% would oppose federal pre-emption.

Cities with a population of 50,000 to 200,000

Of the 51 respondents in this category, 44 answered this question: 2 or 5% would support federal pre-emption. 42 or 95% would oppose federal pre-emption.

Cities with a population of over 200,000

Of the 12 respondents in this category, 10 answered this question: 10 or 100% would oppose federal pre-emption.

Counties with zoning authority

Of the 40 respondents in this category, 39 answered this question: 5 or 13% would support federal pre-emption. 34 or 87% would oppose federal pre-emption.



American Planning Association

1776 Massachusetts Ave. NW

Washington, DC 20036

Phone 202.872.0611

PLEASE RESPOND BY 10/23/95

APA Cellular Tower Survey--2 pages

1. Name _____
2. Title _____
3. Jurisdiction/Population _____
4. Address _____
5. a. City _____ b. State _____ c. Zip _____
6. a. Phone _____ b. Fax _____
7. Has your community ever received an application for permission to erect a cellular communication tower? _____ Yes (If yes, how many? _____) _____ No.
8. How many tower applications has your community approved? _____
9. What were the conditions for approval? _____

10. How many tower applications has your community denied? _____
11. What were the reasons for denial? _____
12. What year was the first application submitted? _____
13. How many cellular towers does your community have now? _____
14. Approximately how long does the application review process take? (from submission to final approval):
a. 2 - 4 weeks _____ b. 1 - 2 months _____ c. 3 - 6 months _____
d. 6+ months _____
15. With an anticipated increase in tower applications, is your community updating or streamlining their present review process? a. Yes _____ b. No _____
16. Were the main concerns regarding tower approval in your community related to:
a. aesthetic appearance _____ b. health risks _____ c. structural soundness _____
17. Does your community encourage or require tower sharing to the extent that it is technically feasible? a. Yes _____ b. No _____

18. What (if any) are your community's cellular tower siting requirements for the following:

- a. height _____
- b. setback _____
- c. landscaping _____
- d. screening/buffering _____
- e. lot sizes _____
- f. accessory equipment buildings _____
- g. lighting _____
- h. security _____
- i. tower maintenance/ abandonment _____
- j. EMF emission standards _____
- _____
- k. Other _____
- _____

19. How would you describe the feasibility of cellular tower siting within your community?

20. Would you support or oppose federal pre-emption of local cellular tower siting standards?

a. support _____ b. oppose _____ Explain: _____

PLEASE RESPOND BY OCTOBER 23 to Karen Graham, APA, FAX 202/872-0643, 75140.1450@Compuserve.com, or to the address indicated above. Deadlines in Washington often slip so if you do not make the deadline, please send us your completed survey as soon as possible. Thanks!